

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:04-CR-00371-F-1

UNITED STATES OF AMERICA)	
)	
v.)	<u>ORDER</u>
)	
MUHAMMED MAHDEE ABDULLAH,)	
Defendant.)	

This matter is before the court on Muhammed Mahdee Abdullah's Petition for Writ of Error Audita Querela [DE-233]. Abdullah argues that the Fourth Circuit Court of Appeals' holding in *United States v. Davis*, 720 F.3d 215 (4th Cir. 2013) requires that his judgment be vacated.

The "writ of audita querela is not available to a petitioner when other remedies exist, such as a motion to vacate under 28 U.S.C. § 2255." *Alonzo v. United States*, 368 Fed. Appx. 467, 2010 WL 750074, at *1 (4th Cir. 2010) (internal quotation marks and citation omitted). The fact that a petitioner may not proceed under § 2255 unless he obtains authorization from the court of appeals does not alter this conclusion. *See Carrington v. United States*, 503 F.3d 888, 890 (9th Cir. 2007) ("[T]he statutory limits on second or successive habeas petitions do not create a 'gap' in the post-conviction landscape that can be filled with the common law writs.")

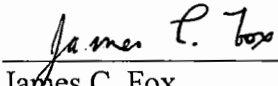
Abdullah has already unsuccessfully pursued collateral relief by filing a § 2255 motion. *See* DE-114. The instant Petition for Writ of Error Audita Querela seeks to bring a new challenge to his sentence. For this reason, the court finds that Abdullah's efforts are little more than a thinly-veiled attempt to proceed with a successive habeas petition. Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the

district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” Abdullah may not circumvent this requirement by raising claims in a writ of audita querela.

Accordingly, Abdullah’s Petition for Writ of Error Audita Querela [DE-233] is DISMISSED. The court concludes that Abdullah has not made the requisite showing to support a certificate of appealability. Therefore, a certificate of appealability is DENIED.

SO ORDERED.

This, the 10th day of July, 2015



James C. Fox
Senior United States District Judge